THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.6388 OF 2000

Date: 12.12.2007

Between:

G.Lakshmi and another

. . .Petitioners

AND

Municipal Corporation of Hyderabad and others

. . .Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.6388 OF 2000

ORDER:

This writ petition is filed for a writ of mandamus to declare the inaction of respondent Nos.1 to 3 in preventing encroachment of land in Survey Nos.123 to 126, in particular the water body, namely, Errakunta, in Lalaguda, Maredpally Mandal, by respondent Nos.5 and 6 and clearing the encroachments already made and restoring the water body, as illegal, void, arbitrary and illegal. The petitioners also sought for the following two reliefs:

> "(i). Respondent No.1 to take all steps to prevent encroachment upon and conversion of the said land by respondents 5 and 6 and others claiming rights through them to a use not sanctioned by law and forthwith remove the unauthorized structures raised thereupon and restore the land to its sanctioned land use; and
>
> (ii). Respondent No.3 to forthwith take all steps to complete the construction of the dhobi ghat sanctioned by him on the water body namely Errakunta and given up due to the unlawful obstruction by respondent No.5."

The petitioners claim to be washermen (Rajakas) by caste and eking out their livelihood by washing clothes in the tank named Errakunta situated in Survey Nos.123, 124 and 126 of Lalaguda, Secunderabad along with a number of other washermen families. According to the petitioners, Errakunta is a tank located in Survey No.124 and also in part of Survey Nos.123 and 126 and traditionally about 200 families of washermen have been using the water of the said tank for washing clothes and thereby eking out their livelihood. The families of the petitioners are among the said 200 families who depend upon the said tank for eking out their livelihood. The

petitioners alleged that respondent Nos.5 and 6 were steadily encroaching into Survey Nos.124, 126, 123 and 125 and selling the same by making it into plots; that the persistent efforts to get the encroachment removed by organizations called 'The Janta Nagarala Yuva Rajaka Samstha' and 'Rajaka Seva Sangham' have not yielded any result. The petitioners are not the members of the said organizations. It is also averred that respondent Nos.1 to 3 are fully convinced that the activities being carried on by respondent Nos.5 and 6 are illegal and that according to Notified Zonal Development Plan for Moulali Zone, the land in dispute is shown as water body. It is further averred that respondent No.3 sanctioned 20 dhobi kanas (together constituting a dhobi ghat) in November, 1998 in Survey No.124 and cost estimate was submitted by Executive Engineer concerned on 16.12.1998 (the learned counsel for the petitioners says that the date of sanction was 18.12.1998) and that when the work began with the digging of bore well in the tank for extracting fresh water, respondent No.5 interfered and destroyed the bore pump in December, 1998.

Sri Rajeshwar Tiwari, District Collector, Hyderabad – respondent No.3 filed a counter-affidavit, wherein it is mentioned that Errakunta tank situated in Lalaguda Village, Maredpally Mandal is an age-old water body as per the survey conducted by the department of Survey of India (Sheet No.56/K/11/MW) and also as per the revenue survey conducted in 1356 Fasli, under Land Revenue Act, 1317 Fasli, Errakunta is a perennial tank and that as per Faisal Patti, the said lands in Survey Nos.123 to 126 of Lalaguda Village are covered by water body and therefore, cultivation had not taken place. It is further stated that the water body of the said tank spreads in Survey Nos.123 to 126 measuring an extent of Ac.20-34 guntas and that the village map clearly testifies the fact that the said land covered by Errakunta

tank is a water body. It is further stated that as per the survey conducted by Hyderabad Urban Development Authority (HUDA) under the provisions of Zonal Regulations Act, 1981, Errakunta tank is notified as a water body falling within conservation zone. It is admitted in the counter-affidavit that few washermen families have used part of this tank as dhobi ghat for washing clothes to eke out their livelihood and that the tank along with the tank poramboke lands vests with the Government under Section 24 of Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli. It is further stated that respondent Nos.5 and 6 and some other persons claiming title through them encroached into the said

tank bed lands by making constructions and undertaking developmental activities. On the directions given to Mandal Revenue Officer, Maredpally, he along with subordinate revenue staff visited the tank area and found hectic efforts being made by some persons claiming title to the land by constructing houses and developing the said lands by laying roads contrary to the provisions of Section 61 of Andhra Pradesh (Telangana Area) Land Revneue Act, 1317 Fasli and Sections 49 and 50 of Andhra Pradesh (Telangana Area) Irrigation Act, 1357 Fasli and that the alleged layout is without any permission from HUDA, MCH etc. It is further stated that administrative sanction was issued on 08.09.2001 for providing bore well and accordingly, bore well was dug and pumps were erected and respondent No.5 destroyed the same. On the complaint given against respondent No.5, Commissioner of Police registered a criminal case and that Special Officer/Commissioner, Municipal Corporation of Hyderabad was requested vide letter, dated 08.02.2002 of District Backward Classes Service Cooperative Society Limited, Hyderabad to release an amount of Rs.5,66,500/- towards the Corporation share in respect of Errakunta

dhobi ghat in terms of G.O.Ms.No.9, dated 09.06.1994 and that the amount has not been released from the Corporation so far. It is further stated that the Collector is making all efforts to evict the encroachers and clear the tank bed land and provide dhobi ghat to the eligible existing washermen.

Sri V.Shankar Narayana, Additional City Planner of respondent No.1 Corporation (presently Greater Hyderabad Municipal Corporation) filed a counter-affidavit, in which, it is admitted that the land in dispute is declared as water body and conservation area in the notified master plan; that there is no approved layout for the said area and no permission for construction was granted by the Corporation. Though the structures raised are liable for demolition, in view of the injunction orders granted by the competent civil Courts, respondent No.1 is unable to take action for demolition and eviction of the unauthorized occupants. It is further pleaded that respondent Nos.5 and 6 without proper approval of layout, are seeking to retain possession and as and when the injunction order is vacated, the Corporation will take appropriate action.

Smt.V.Anuradha, Mandal Revenue Officer, Maredpally Mandal also filed a counter-affidavit, in which, the pleas identical to those raised by respondent No.3 in his counter-affidavit have been taken. She emphasized that in view of the law declared by the Supreme Court in a number judgments, it is the duty of the State to protect the environment and water bodies to maintain ecology and environment and accordingly, she has been taking all the steps to protect and preserve the water body. She also questioned the right of respondent Nos.5 and 6 over the property.

Respondent No.5 filed a counter-affidavit, in which, he claimed

right over the property in dispute under agreement of sale, dated 16.01.1992 executed by Sri R.Sriramulu, who got title from the original pattedars and that by virtue of the said agreement of sale, he was inducted into possession. He further stated that one Rajaka Seva Sangam represented by its President, Sri G.Krishna filed Writ Petition No.2745 of 1998 in this Court and the same was dismissed and that respondent No.3 issued D.O. letter No.Peshi/2008/97, dated 13.12.1997, wherein it is clearly stated that land in Survey No.124 is classified as a patta land and the revenue records show that the same is a patta land being in possession of respondent No.5. He denied the existence of any tank in Survey No.124.

Sri K.Balagopal, learned counsel for the petitioners at the outset submitted that the first part of the prayer ((i) supra) is not being pressed by the petitioners due to the reason that the dispute as to whether the lands in Survey Nos.123 to 126 are patta lands or not is presently pending before the Supreme Court. He further submitted that the material on record clinchingly establishes that Errakunta is registered as a water body in all the revenue records apart from the same having been notified as such in the Zonal Developmental Plan for Moulali Zone. He relied upon Section 15 of Andhra Pradesh Urban Areas (Development) Act, 1975 and contended that after coming into operation of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan. Learned counsel further contended that since Errakunta is notified as a water body in the zonal plan and sanction for construction of dhobi ghat was already accorded by respondent No.3, appropriate directions may be issued to respondent Nos.1 to 3 to take steps to commence and complete the construction of dhobi ghat on the

part of the water body which is still available.

Learned counsel representing respondent Nos.7 and 8, who are brought on record as legal representatives of respondent No.5 submitted that respondent No.5 had sold the property and, therefore, presently respondent Nos.7 and 8 are not concerned with the property in dispute. There is no representation for respondent No.6.

Letter, dated 06.12.1997 addressed by Hyderabad Urban Development Authority to respondent No.3 shows that a water tank known as Errakunta is located in Survey Nos.124 and 126 of Lalaguda Village and that as per the Notified Plan for Moulali Zone, the site comprised in Survey No.124 is notified as a water body and the site in Survey No.126 is falling partly in water body and partly in conservation areas, wherein residential activity or any other development activity is prohibited. Whether the property was a private property and whether the constructions undertaken by the purchasers from respondent No.5 who are third parties to this writ petition are legal and valid, are all issues which are not germane for consideration in this writ petition in view of the submission of the learned counsel for the petitioners that he is not pressing the same.

But, from the above referred letter, dated 06.12.1997 and the counter-affidavits filed by respondent No.3, Mandal Revenue Officer and Town Planning Officer of respondent No.1, it is quite evident that whether the property is private property or not, the same, which is comprised in Survey No.124 in full and 126 in part, is notified as water body. In order, dated 30.11.1998, a reference to which was found in letter, dated 18.12.1998 of Executive Engineer, Hyderabad District Scheduled Caste Service Cooperative Society Limited, Hyderabad, respondent No.3 directed Executive Engineer (SW), Hyderabad for

taking up the construction works at Dhobi ghat for Errakunta immediately on the representation made by Rajaka Seva Sangham, Sai Nagar, Tarnaka and in letter, dated 15.12.1998 Deputy Executive Engineer (SW), Hyderabad submitted a detailed estimate for construction of compound wall to proposed dhobi ghat, 20 dhobikhanas and a shed to proposed dhobi ghat for Rs.10.30 lakhs.

In view of undeniable fact that Errakunta is notified as a water body, the request of the petitioners for construction of dhobi ghat is legally justifiable. I am, therefore, of the view that to the extent the relief sought for by the petitioners for construction of dhobi ghat by respondents 1 and 3, the writ petition deserves to be allowed. Accordingly, respondents 1 and 3 are directed to take immediate steps to commence and complete construction of the dhobi ghat as proposed in letter, dated 30.11.1998 of respondent No.3 on the water body, which remained unoccupied in Survey Nos.124 and 126 of Lalaguda Village, Maredpally Mandal, within a period of three months from today.

The writ petition is accordingly disposed of.

C.V.NAGARJUNA REDDY, J

12th DECEMBER, 2007

kvni